





ARIZONA CORPORATION COMMISSION

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AT CORP COMMISSION BECKET CONTROL

DATE:

FEBRUARY 25, 2013

DOCKET NO.:

T-20766A-10-0433

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

WIMACTEL, INC. (CC&N/AOS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 6, 2013

The enclosed is <u>NOT</u> an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has <u>tentatively</u> been scheduled for the Commission's Open Meeting to be held on:

MARCH 12, 2013 AND MARCH 13, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

FEB 25 2013

DUCKETED BY

JODI JERICH

EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail <u>SABernal@azcc.gov</u>.

1 BEFORE THE ARIZONA CORPORATION COMMISSION 2 COMMISSIONERS 3 BOB STUMP - Chairman **GARY PIERCE** BRENDA BURNS **BOB BURNS** 5 SUSAN BITTER SMITH DOCKET NO. T-20766A-10-0433 IN THE MATTER OF THE APPLICATION OF WIMACTEL, INC. FOR APPROVAL OF A 7 CERTIFICATE OF CONVENIENCE AND DECISION NO. NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND ALTERNATIVE OPERATOR SERVICES TELECOMMUNICATIONS SERVICES ORDER Open Meeting 10 March 12 and 13, 2013 Phoenix, Arizona 11 12 BY THE COMMISSION: 13 On October 22, 2010, WiMacTel, Inc. ("WiMacTel" or "Company" or "Applicant") 14 15

submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide Resold Long Distance and Alternative Operator Services ("AOS") telecommunication services in Arizona. The Company also petitioned the Commission for a determination that its proposed services should be classified as competitive.

On June 16, 2011, WiMacTel docketed responses to the Commission's Utilities Division ("Staff") First Set of Electronic Data Requests.

On August 30, 2012, the Company filed an updated list of states where it is currently certificated to provide telecommunication services and also filed replacement tariff pages.

On September 5, 2012, the Company filed its 2011 financial statements and an Affidavit of Publication showing that notice of its application had been published in the Arizona Republic, a newspaper of general circulation in Arizona on August 27, 2012.

On December 21, 2012, Staff filed a Staff Report recommending approval of the Company's application with conditions.

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

- 1. WiMacTel is a foreign "C" corporation organized under the laws of Delaware and headquartered in Sarasota, Florida.¹
 - 2. WiMacTel's parent company is QuorTech Equitites Ltd, a privately held corporation.²
- 3. On October 22, 2010, WiMacTel filed with the Commission an application for a CC&N to provide Resold Long Distance and AOS telecommunication services in Arizona. The application states that the Company intends to provide interexchange long distance and operator services to various aggregator³ locations throughout the state, using underlying carrier services.⁴
 - 4. Notice of the application was given in accordance with the law.
- 5. Staff recommends approval of the Applicant's application for a CC&N to provide resold long distance telecommunication services subject to the following conditions:
 - a. WiMacTel comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunication services;
 - b. WiMacTel maintain its accounts and records as required by the Commission;
 - c. WiMacTel file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
 - d. WiMacTel maintain on file with the Commission all current tariffs and rates, and any service standards the Commission may require;
 - e. WiMacTel comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
 - f. WiMacTel cooperate with Commission investigations including, but not limited to customer complaints;
 - g. WiMacTel participate in and contribute to the Arizona Universal Service Fund, as required by the Commission;
 - h. WiMacTel be required to notify the Commission immediately upon changes to its name, address, or telephone number;

² Applicant's Response to Data Request docketed June 16, 2011.

⁴ Application at A-17.

DECISION NO.

Application at A-1 and Attachment A.

³ WiMacTel's proposed tariff defines an aggregator as – any person, excluding local exchange carriers and cellular service providers that, in the ordinary course of its operations, make telephones available to the public or to transient users of its premises, for intrastate telephone calls using a provider of operator services.

- i. WiMacTel's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
- j. The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
- k. In the event WiMacTel states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate;
- 1. The Commission authorize WiMacTel to discount its rates and service charges to the marginal cost of providing the services;
- m. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Accordingly, WiMacTel's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by WiMacTel, the fair value information provided was not given substantial weight in their analysis;
- n. If at some future date, the Company wants to collect advances, deposits and/or prepayments from its resold interexchange service customers, WiMacTel be required to file an Application with the Commission for Commission approval. Such Application must reference the Decision in this docket and must explain the Company's plans for procuring its performance bond or irrevocable sight draft letter of credit;
- o. WiMacTel's interLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 1;
- p. WiMacTel's intraLATA rates and service charges for AOS services should be based on the maximum rates and service charges as set forth in Schedule 2;
- q. WiMacTel property surcharge for AOS services be limited to \$1.00 per call; and
- r. In the event the WiMacTel requests to discontinue and/or abandon its service area, it must provide notice to both the Commission and its customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107.
- 6. Staff further recommends the Applicant comply with the following conditions within the timeframes outlined or WiMacTel's CC&N should be considered null and void, after due process.
 - a. That WiMacTel docket shall file conforming tariffs with the Commission's Docket Control for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Company does not collect advances, deposits and/or prepayments from its customers.

Technical Capabilities

- 7. WiMacTel states it is authorized to provide competitive telecommunication services in forty-six (46) states/jurisdictions.⁵
- 8. Staff verified in ten (10) states/jurisdictions that WiMacTel is certificated or registered to provide interexchange and/or AOS telecommunications services.⁶
- 9. WiMacTel provided information indicating that the Company's management team currently consists of three officers/directors with a combined total of 43 years of experience in the telecommunications industry.
- 10. Based on the above information, Staff concludes that WiMacTel has the technical capabilities to provide the services it is requesting in its application.⁷

Financial Capabilities

- 11. When WiMacTel initially filed its application with the Commission it was a newly formed start-up company, had not begun service in any jurisdiction, and could not provide financial statements.⁸ In subsequent filings, WiMacTel provided unaudited financial statements for the 12 months ending December 31, 2010, listing total assets at \$413,804; total equity of (\$483); and a net income of (\$484).⁹ For the 12 months ending December 31, 2011, WiMacTel listed total assets of \$1,225,789; total equity of (\$247,183); and net income of (\$246,698).¹⁰
- 12. WiMacTel's proposed tariffs indicate that it will not require deposits or advanced payments from interexchange or AOS customers in Arizona. The Commission's policy is that only resellers who require deposits or advance payments should post a performance bond or irrevocable sight draft letter of credit to protect customers' prepayments. Under the Commission's policy, there is no performance bond requirement for WiMacTel.

⁵ Applicant's Supplemental Information docketed August 30, 2013.

 $\frac{26}{3}$ Staff Report at 2.

⁷ Staff Report at 1.

⁸ Application at B-1.

⁹ Applicant's Data Response Attachment II docketed June 16, 2011.

¹⁰ Applicant's Data Response docketed September 5, 2012.

11 I

DECISION NO.

Rates and Charges

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- 13. WiMacTel states that its fair value rate base ("FVRB") is zero.¹² Staff believes WiMacTel's FVRB is too small to be useful in a fair value analysis, would not be useful in setting rates, and should not be given substantial weight in this analysis.¹³ Staff further stated that in general, rates for competitive services are not set according to a rate of return regulation, but are heavily influenced by the market.¹⁴ Staff recommends that while it considered the fair value rate base information, that it not be given substantial weight in setting rates for WiMacTel.¹⁵
- 14. Staff states that WiMacTel will be a new entrant into the market, face competition from incumbents, and WiMacTel will not be able to exert any market power in the markets it proposes to serve. Further, Staff states that the competitive process should result in rates that are just and reasonable.
- 15. The Commission adopted maximum rates for AOS providers in Decision No. 61274 (December 14, 1998).
- 16. Staff reviewed the rates for five major toll carriers¹⁶ ("rate group") to establish the maximum AOS rates, service charges, and operator dialed surcharges, which are reflected in Schedules 1 and 2 attached hereto. Staff states that if any of the carriers forming the rate group obtains higher rates, WiMacTel should be authorized to allow its rates to float in accordance with the carriers' revised higher rates, so long as WiMacTel meets the requirements as set forth in A.A.C. R14-2-1110.¹⁷
- 17. Staff recommends that WiMacTel be allowed to discount its rates and service charges to the marginal cost of providing the services.¹⁸ Staff states that the authority to discount rates and service charges will provide WiMacTel with the pricing flexibility it needs to compete with other providers and to be able to obtain new end-users.¹⁹

15 Id.

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18 Staff Report at 6.

28 19 Id.

DECISION NO.

¹² Applicant's Data Response docketed June 16, 2011.

¹³ Staff Report at 3.

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²⁵ Id. AT&T Communications of the Mountain States, Inc.; MCI Telecommunications Corporation; Sprint Communications Company; Allnet Communications Services, Inc.; and QWEST Corporation (f/k/a USWC, now d/b/a Century Link).

¹⁷ A.A.C. R14-2-1110 allows an AOS provider to float its rates provided the provider files: 1) an estimate of the value of its plant to serve Arizona customers in order to determine its fair value; 2) a tariff setting forth the new maximum rates (rates cannot exceed the maximum rate of the rate group); and 3) all information under the rule.

Staff recommends for interLATA and intraLATA toll charges, that WiMacTel's rates

According to Staff, an operator-dialed surcharge is imposed when an end-user has the

The Commission adopted A.A.C. R14-2-1006.A, which requires an AOS provider to

Staff indicates that the proposed tariffs provided by WiMacTel for rates and charges for

and charges be based on the maximum rates and charges authorized for certain interexchange carriers

("IXCs") and various facilities-based carriers providing intraLATA toll services, which are reflected in

capability to dial the call, but requests that the operator dial and make the call.²¹ Staff states a property

surcharge is a per call bonus paid to the aggregator by the AOS provider and that in previous Decisions

the Commission has approved both operator dialed²² and property (location-specific or subscriber)

immediately route all zero-minus calls to the originating local exchange carrier ("LEC"). Pursuant to

A.A.C. R14-2-1006.B, however, an AOS provider may obtain a waiver of this requirement if the AOS

is able to clearly and convincingly demonstrate that it has the capability to process its zero-minus calls

with equal quickness and accuracy as provided by the LEC. Staff states that WiMacTel did not request

interLATA and intraLATA services are identical to or less than the rates and service charges contained

in Schedules 1 and 2, and therefore Staff believes WiMacTel's proposed tariffs are reasonable and

Staff's Schedules 1 and 2 respectively, attached herein and incorporated by reference.²⁰

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surcharges.²³

a waiver.

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Complaint Information

should be approved.24

- 22. WiMacTel has neither had an application for service denied nor revoked in any state and no formal complaints, civil, or criminal proceedings filed against it.
- 23. The Commission's Consumer Services Section shows there have been zero complaints, inquiries, or opinions filed against WiMacTel through August 27, 2012.
 - 24. The Commission's Corporation Division indicates WiMacTel is in good standing.

²⁶ Staff Report at 6.

²¹ Staff Report at 7.

^{27 | 22} Id.

^{28 23} Id.

²⁴ Staff Report at 8.

Staff states that a search of the Federal Communications Commission's website

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1	10. Staff's recommendations are reasonable and should be adopted.
2	<u>ORDER</u>
3	IT IS THEREFORE ORDERED that the application of WiMacTel, Inc. for a Certificate of
4	Convenience and Necessity for authority to provide Resold Long Distance and Alternative Operator
5	Services telecommunication services in Arizona, is hereby approved, subject to Staff's
6	recommendations as more fully described in Findings of Fact Nos. 5 and 6.
7	IT IS FURTHER ORDERED that if WiMacTel, Inc. fails to comply with the Staff
8	recommendations described in Findings of Fact No. 6, the Certificate of Convenience and Necessity
9	granted herein shall be considered null and void after due process.
10	IT IS FURTHER ORDERED that this Decision shall become effective immediately.
11	BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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14	CHAIRMAN COMMISSIONER
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16	COMMISSIONER COMMISSIONER COMMISSIONER
17	IN WITNESS WHEREOF, I, JODI JERICH, Executive
18	Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the
19	Commission to be affixed at the Capitol, in the City of Phoenix, this day of 2013.
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22	JODI JERICH
23	EXECUTIVE DIRECTOR
24	DISSENT
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26	DISSENT
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1	SERVICE LIST FOR:	WIMACTEL, INC.		
2	DOCKET NO.:	T-20766A-10-0433		
3	James MacKenzie, President Chief Executive Officer and Secretary			
4	WIMACTEL, INC. 2225 East Bayshore Road, Suite 200			
5	Palo Alto, CA 94303-3220			
6	Janice Alward, Chief Counsel Legal Division			
7	ARIZONA CORPORATION COMMI 1200 West Washington Street	SSION		
8	Phoenix, AZ 85007			
9	Steven M. Olea, Director Utilities Division		A Company	
10	ARIZONA CORPORATION COMMI 1200 West Washington Street	SSION		
11	Phoenix, AZ 85007			
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Schedule 1

Alternative Operator Services
Maximum InterLata Usage Charges

Mileage Band	Day Time (a)		Evening/Holiday (b)		Night/Weekend (c)	
	First Minute	Addfl. Minute	First Minute	Addtl. Minute	First Minute	Addtl. Minute
0-10	0.3000	0.3000	0.3000	0.3000	0.3000	0.3000
11-16	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
17-22	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
23-30	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
31-40	0.5065	0.3000	0.3135	0.3000	0.3000	0.3000
41-55	0.5307	0.3332	0.3135	0.3000	0.3000	0.3000
56-70	0.5560	0.3732	0.3590	0.3000	0.3000	0.3000
71-124	0.5560	0.3865	0.3590	0.3000	0.3000	0.3000
125-196	0.5560	0.4265	0.3590	0.3000	0.3000	0.3000
197-292	0.5560	0.4799	0.3590	0.3000	0.3000	0.3000
293 & Over	0.5800	0.4820	0.3908	0.3000	0.3000	0.3000

Rate Periods

- (a) Day time is Monday through Friday 8:00 a.m. to 5 p.m.
- (b) Evening/Holiday is Sunday through Friday 5:00 p.m. to 11:00 p.m. Officially recognized holidays are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. Evening rates are applicable during all holiday hours, except for hours when a lower rate (i.e. Night/Weekend) is applicable.
- (c) Night/Weekend is Sunday through Thursday 11:00 p.m. to 8:00 a.m., 11:00 p.m. Friday through 5:00 p.m. Sunday.

Alternative Operator Services
Maximum InterLata Services Charges

Service (1) (2)	Maximum Charge
Customer Dialed Calling or Credit Card	\$1.50
Operator Dialed Calling or Credit Card	\$2.50
Station - to - Station Collect	\$2.33
Person - to - Person Collect	\$4.66
Third Party Person - to - Person	\$4.66
Third Party Station - to Station	\$2.33
Person—to - Person	\$4.50
Station - to - Station	\$3.50
Directory Assistance	\$2.00

- (1) An Operator Dialed Surcharge of \$2.00 will be applied to an end user who has the capability to call, but requests the operator to do so instead. In accordance with A.A.C. R14-2-1005, end users shall be informed of this charge before call completion. This surcharge will not be imposed in cases of equipment failure or where the end user is experiencing a disability.
- (2) A Property Surcharge, Subscriber Surcharge or Location Specific Charge may be added to all operator assisted calls completed from Company subscriber locations. This surcharge will appear on the customer's bill and will be capped at \$1.00 per call; all of this surcharge will be remitted to the aggregator; however, this surcharge will not be collected by the Company if the aggregator is also collecting a surcharge.

DECISION NO.	
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Schedule 2

Alternative Operator Services

Maximum IntraLata Usage Charges

Mileage Band	Day Time (a)		Evening/Holiday (b)		Night/Weekend (c)	
Dailu	First Minute	Addtl. Minute	First Minute	Addtl. Minute	First Minute	Addtl. Minute
0-10	0.3000	0_3000	0.3000	0.3000	0.3000	0.3000
11-16	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
17-22	0.4000	0.3000	0.3000	0.3000	0.3000	0.3000
23-30 ·	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
31-40	0.4500	0,3000	0.3135	0.3000	0.3000	0.3000
41-55	0.4500	0.3000	0.3135	0.3000	0.3000	0.3000
56-70	0.5200	0.3300	0.3590	0.3000	0.3000	0.3000
71-124	0.5200	0.3300	0.3590	0.3000	0.3000	0.3000
125-196	0.5300	0.3600	0.3590	0.3000	0.3000	0.3000
197-292	0.5800	0.3600	0.3590	0.3000	0.3000	0.3000
293 & Over	0.5800	0.3800	0.3980	0.3000	0.3300	0.3000

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Person - to - Person Collect	\$4.50
Third Party Person - to - Person	\$4.50
Third Party Station - to Station	\$2.30
Person—to – Person	\$4.50
Station - to - Station	\$3.50
Directory Assistance	\$2.00

- (1) An Operator Dialed Surcharge of \$2.00 will be applied to the capability to call, but requests the operator to do so instead. In accordance with A.A.C. R14-2-1005, end users shall be informed of this charge before call completion. This surcharge will not be imposed in cases of equipment failure or where the end user is experiencing a disability.
- (2) A Property Surcharge, Subscriber Surcharge or Location Specific Charge may be added to all operator assisted calls completed from Company subscriber locations. This surcharge will appear on the customer's bill and will be capped at \$1.00 per call; all of this surcharge will be remitted to the aggregator, however, this surcharge will not be collected by the Company if the aggregator is also collecting a surcharge.

DECISION NO.	